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6 Attorneys for Defendants

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Enrique Montijo,

10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,

13 Defendants.

No. CV 13-1439-TUC-DCB

**DEFENDANTS' ANSWER TO
FIRST AMENDED COMPLAINT**

[Jury Trial Demanded]

14
15 Defendants Bennett, Robinson, Ryan, Suarez, and Swaney answer Count II of
16 Plaintiff Montijo's First Amended Complaint as follows:

17 **A. PARTIES & JURISDICTION**

18 1. Answering ¶ 1, Defendants lack knowledge or information sufficient to
19 form a belief about Plaintiff's current residence and deny that Plaintiff is currently in the
20 physical custody of the Arizona Department of Corrections ("ADC").

21 2. Answering ¶ 2, Defendants admit that at the time relevant to Plaintiff's
22 allegations, he was in the custody of the ADC.

23 3. Answering ¶ 3, Defendants admit that during the relevant time, they were
24 each employed by the Arizona Department of Corrections.

25 4. Answering ¶ 4, Defendant Ryan admits that he is the Director of ADC and
26 that his powers and duties are outlined under A.R.S. § 31-201.01 and § 41-1604.

1 5. Answering ¶¶ 5-6, Defendants admit that the Court has jurisdiction over this
2 action pursuant to 42 U.S.C. § 1983 and generally deny that jurisdiction exists on any
3 other basis.

4 **B. STATEMENT OF FACTS**

5 6. Answering ¶¶ 7-38, Defendants deny all of the material allegations therein
6 and specifically deny that they deprived Plaintiff proper medical care or access to medical
7 care in violation of any constitutional or other federal civil right.

8 **C. CAUSE OF ACTION**

9 **COUNT II – DELIBERATE INDIFFERENCE**

10 7. Answering ¶¶ 47-58, Defendants deny all of the material allegations therein,
11 specifically deny that they were deliberately indifferent to Plaintiff's health or medical
12 care, that any custom or policy of deliberate indifference existed, or that they violated any
13 of Plaintiff's constitutional or other federal civil rights including, but not limited to his
14 Eighth Amendment rights, and specifically deny that they injured or caused Plaintiff to
15 suffer any injuries.

16 8. Defendants deny each and every allegation of Plaintiff's Complaint that is
17 not specifically admitted herein.

18 9. Defendants affirmatively alleges that Plaintiff fails to state a claim in that
19 the First Amended Complaint fails, as a matter of law, to allege sufficient affirmative
20 involvement to impose supervisory liability against Director Ryan.

21 10. Defendants further assert the following affirmative defenses:

- 22 (a) failure to state a claim upon which relief can be granted;
- 23 (b) statute of limitations;
- 24 (c) failure to exhaust available administrative remedies;
- 25 (d) absolute immunity;
- 26 (e) Eleventh Amendment immunity;

- (f) qualified immunity;
- (g) failure to state a claim for actual, compensatory, or punitive damages;
- (h) official capacity claims are barred under 42 U.S.C. § 1983;
- (i) the doctrine of respondeat superior does not apply in a civil rights action;
- (j) any other affirmative defenses recognized or authorized under Rule 8(c), Fed. R. Civ. P.; and any and all privileges, defenses and immunities under statute and common law which may be found applicable during the course of discovery.

WHEREFORE, Defendants Bennett, Robinson, Ryan, Suarez, and Swaney respectfully request that the Court enter its Order dismissing Plaintiff's First Amended Complaint with prejudice and its Judgment in their favor, awarding them costs of defense and attorney's fees pursuant to 42 U.S.C. § 1988, and granting such other and further relief as to it seems just and proper.

RESPECTFULLY SUBMITTED this 7th day of August, 2014.

THOMAS C. HORNE
ATTORNEY GENERAL

s/ Claudia Acosta Collings
CLAUDIA ACOSTA COLLINGS
Assistant Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2014, I electronically filed the foregoing Document with the United States District Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

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